



**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 3280, 3282**

**[Docket No. FR 6018-P-01]**

**RIN 2502-AJ42**

**Streamlining and Aligning Formaldehyde Emission Control Standards for Certain Wood Products in Manufactured Home Construction with Title VI of the Toxic Substance Control Act**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed Rule.

**SUMMARY:** Through this rulemaking, HUD proposes to implement the Formaldehyde Standards for Composite Wood Products Act of 2010, which added Title VI to the Toxic Substances Control Act (TSCA). In addition, HUD proposes to remove certain aspects of HUD's current manufactured housing formaldehyde standards requirements that are not addressed by TSCA, including provisions for a health notice to be posted in every manufactured home, testing of post-treatment panels after certification, and testing of certain plywood materials.

**DATES:** Comment Due Date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested persons are invited to submit comments regarding this Proposed Rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development via mail or electronic submission as indicated below. All submissions and communications must refer to the above docket number and title.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit comments, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically.

*Note:* To receive consideration as public comments, comments must only be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (toll-free number). Copies of all comments received by HUD by the comment due date will be available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Teresa B. Payne, Acting Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington DC 20410; telephone 202-402-5365 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8389 (toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The National Manufactured Housing Construction and Safety Standards Act of 1974 (Pub. L. 93-383; enacted August 22, 1974), as amended by the Manufactured Housing Improvement Act of 2000,<sup>1</sup> (42 U.S.C. 5401-5426) (the “Act”) provides authority to HUD to establish Federal manufactured home construction and safety standards. HUD issued regulations for manufactured home construction and safety standards in 1975, which are codified at 24 CFR part 3280, and manufactured home procedural and enforcement regulations in 1976, codified at 24 CFR part 3282. See 40 FR 58752, 41 FR 19852. On August 9, 1984, HUD amended its home construction and safety standards regulations to include formaldehyde emission levels for composite wood products used in manufactured homes, product certification and qualifications for composite wood products, panel identification requirements, testing requirements for formaldehyde emissions, and a required formaldehyde emissions health notice for manufactured homes. See 49 FR 32011, 24 CFR 3280.308, 24 CFR 3280.309, and 24 CFR 3280.406.

Formaldehyde Standards for Composite Wood Products Act of 2010

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<sup>1</sup> The Manufactured Housing Improvement Act of 2000 (Title VI of Pub. L. 106-569) created the Manufactured Housing Consensus Committee (MHCC) to develop proposed revisions to the Federal manufactured home construction and safety standards.

In 2007, the California Air Resources Board (CARB) issued an Airborne Toxic Control Measure (ATCM) to reduce formaldehyde emissions from hardwood plywood, medium-density fiberboard, and particleboard, products referred to collectively as composite wood products. The CARB ATCM requires manufacturers to meet formaldehyde emission standards for the covered composite wood products that are sold, offered for sale, supplied, or manufactured for use or sale in California. While suppliers of composite wood products in California must meet CARB standards, the CARB ATCM does not directly apply to plywood and particleboard materials when installed in manufactured homes subject to regulations promulgated by HUD.

The Formaldehyde Standards for Composite Wood Products Act of 2010, which added TSCA Title VI (Pub. L. 111-199, enacted on July 7, 2010) (“Formaldehyde Act of 2010”), established new formaldehyde emissions standards for all hardwood plywood, medium-density fiberboard, and particleboard, including when incorporated into finished goods, that are sold, supplied, offered for sale, or manufactured (including imported) in the United States. The Act created Federal emissions standards to align with the CARB ATCM Phase 2 standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States, thus alleviating increased burden on the regulated community. TSCA Title VI also requires EPA to issue regulations implementing those emissions standards and provides that EPA regulations cover the following subjects: (a) labeling, (b) chain of custody requirements, (c) sell-through provisions, (d) ultra low-emitting formaldehyde resins, (e) no-added formaldehyde-based resins, (f) finished goods, (g) third-party testing and certification, (h) auditing and reporting of Third-Party Certification Program, TPCs <sup>2</sup>,

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<sup>2</sup> 40 CFR 770.7 describes EPA’s Third-Party Certification Program and establishes qualifications to be recognized by EPA as an EPA TSCA Title VI Product AB.

(i) recordkeeping, (j) enforcement, (k) laminated products, and (l) exceptions from the requirements of regulations promulgated for products and components containing *de minimis* amounts of composite wood products (but not exceptions to the emission standards). TSCA Title VI also directs HUD to update its regulation addressing formaldehyde emission standards to ensure consistency with the standards in TSCA not later than 180 days after EPA promulgates regulations.

#### EPA Regulations on “Formaldehyde Emission Standards for Composite Wood Products”

After undergoing notice and comment, on December 12, 2016, EPA promulgated its final rule, “Formaldehyde Emission Standards for Composite Wood Products.” 81 FR 89674. The final rule implements TSCA Title VI to reduce formaldehyde emissions from composite wood products, which will reduce exposure to formaldehyde and decrease potential adverse health effects. The final rule became effective May 22, 2017 and had multiple compliance dates for different provisions.<sup>3</sup> On September 25, 2017, EPA extended all the compliance dates: the manufactured-by compliance date for composite wood products from December 12, 2017 to December 12, 2018; the compliance date for import certification provisions from December 12, 2018 to March 22, 2019; the manufactured-by compliance date for laminated products from December 12, 2023 to March 22, 2024; and the transitional period for needing an EPA accreditation from December 12, 2018 to March 22, 2019.<sup>4</sup>

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<sup>3</sup> The EPA final rule, published on December 12, 2016, had an effective date of February 10, 2017 (81 FR 89674). EPA published a delay of the effective date from February 10, 2017 until March 21, 2017, in the Federal Register notice on January 26, 2017 (82 FR 8499). The effective date was further delayed until May 22, 2017, in the Federal Register notice on March 20, 2017 (82 FR 14324). On May 24, 2017, EPA issued a notice of proposed rulemaking seeking public comment on extending the compliance dates in the EPA final rule (82 FR 23769).

<sup>4</sup> On September 25, 2017, EPA proceeded with a final rule extending the compliance dates in the EPA final rule (82 FR 44533).

On April 4, 2018, EPA published a Federal Register notice that announced a March 13, 2018, court order. The court order addressed litigation over the December 12, 2018, compliance date, that resulted in the compliance date for emission standards, recordkeeping, and labeling (i.e., the manufactured by date or import date) being reduced from December 12, 2018 to June 1, 2018. EPA also described the status of compliance dates and stated that composite wood products manufactured or imported until March 22, 2019 must be labeled as compliant with either the TSCA Title VI or CARB ATCM Phase II emission standards, and regulated products manufactured or imported after March 22, 2019 may not rely on the CARB reciprocity of 40 CFR 770.15(e) and must be certified and labeled as TSCA Title VI compliant by an EPA TSCA Title VI TPC with all of the required accreditations.<sup>5</sup>

Specifically, EPA created a new 40 CFR part 770 entitled “Formaldehyde Standards for Composite Wood Products” with four subparts: Subpart A—General Provisions, Subpart B—EPA TSCA Title VI Third-Party Certification Program, Subpart C—Composite Wood Products, and Subpart D—Incorporation by Reference.

Subpart A provides the scope of EPA regulations, which includes whether provisions apply to panels, component parts, or finished goods, or all three; effective dates for the standards for different products; a definition section; exemptions from the hardwood plywood definition for certain laminated products; and references the penalties for failing to comply with EPA requirements at 15 U.S.C. 2697.

Subpart B provides the necessary requirements for manufacturers that plan to participate in the EPA TSCA Title VI Third-Party Certification Program as an EPA TSCA Title VI product

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<sup>5</sup> On April 4, 2018, EPA issued an Announcement of Court Order and Compliance Date rule amending the compliance dates extended in the September 25, 2017 rule (83 FR 14375).

accreditation body, laboratory accreditation body, or a third-party certifier; and directions to entities on providing applications, notifications, and reports to EPA.

Subpart C establishes, among other things, formaldehyde emission standards for composite wood products offered for sale or manufacture in the United States. These standards apply regardless of whether the product is in the form of a panel, a component part, or incorporated into a finished good. 40 CFR 770.12 prohibits the sale of stockpiled inventory of composite wood products and establishes standards to determine whether stockpiling has occurred. 40 CFR 770.15 establishes certification requirements for composite wood products, providing that unless exempt, only certified composite wood products, whether in the form of panels or incorporated into component parts or finished goods are permitted to be sold, supplied, offered for sale, or manufactured in the United States. 40 CFR 770.17 and 770.18 establish, respectively, certification and application requirements for no-added formaldehyde-based resins and ultra low-emitting formaldehyde resins. Testing requirements for products with formaldehyde are established in 40 CFR 770.20. 40 CFR 770.21 establishes requirements for panel producers to have a quality control manual, a designated quality control facility for conducting quality control formaldehyde testing, and a quality control manager responsible for emissions quality control. The balance of subpart C addresses testing and isolating of non-complying lots, handling composite wood products shipped into the United States for sample testing, and a requirement for importers, fabricators, distributors, and retailers to take reasonable precautions to ensure that the wood product that they sell comply with the emission requirements under the regulations. Finally, 40 CFR 770.40 and 770.45 establish reporting and recordkeeping requirements for panel producers; and labeling of panels or bundles of panels sold, supplied, or offered for sale in the United States, respectively.

Subpart D sets forth the standards that were approved by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51 for incorporation by reference standards, which are necessary for testing in EPA regulations.

#### HUD's Manufactured Housing Consensus Committee Consultation

On October 25-27, 2016, HUD held a meeting with its Manufactured Housing Consensus Committee (MHCC). See 81 FR 66288. During the meeting, HUD shared a preliminary working draft of a rule to amend and reduce its current requirements for formaldehyde emissions from certain composite wood products, consistent with TSCA and EPA requirements. See Minutes MHCC Meeting October 25-27, 2016, <https://portal.hud.gov/hudportal/documents/huddoc?id=mhcc-oct2016-meetminsfinal.pdf>. After discussions, the MHCC voted to accept the working draft as presented, which cross-referenced EPA's requirements in HUD's regulations and removed the health hazard warning requirement in 24 CFR 3280.309, but recommended that HUD add the EPA required provision for labeling each manufactured home as being "TSCA Title VI compliant" to the data plate of each manufactured home in 24 CFR 3280.5.

## **II. Proposed Rule**

HUD proposes to revise HUD's current formaldehyde emission standards for composite wood products used in manufactured housing at 24 CFR part 3280 and 3282 to ensure consistency with the requirements established by section 601 of TSCA. HUD also proposes to update its existing formaldehyde emission levels for composite wood products used in manufactured homes; the certification, qualifications, panel identification, and testing requirements for formaldehyde emissions; and third-party certification requirements. HUD, through this proposed rulemaking, also seeks to revise its recordkeeping requirements, which reduce the time a producer needs to maintain records; requires inclusion of a statement indicating



compliance with TSCA Title VI on the data plate; and adds requirements on non-complying lots and stockpiling, consistent with TSCA Title VI and EPA regulations. Lastly, HUD proposes to remove the requirement for a formaldehyde emissions health notice for manufactured homes and remove HUD's existing requirements in 24 CFR 3280.308(d) for treatment after certification of plywood and particleboard with substances containing formaldehyde.

HUD believes that the intent of TSCA Title VI was for HUD to align its requirements in 24 CFR 3280.308 with EPA requirements, including the scope of products tested and process for testing. The Senate Report on TSCA noted that in place of defining "manufactured housing" as a "finished product" under EPA regulations, HUD would be required to "ensure that the regulation [24 CFR 3280.308] reflects the standards established by section 601 of TSCA" and specifically referenced HUD's plywood and particleboard standards needing to be consistent with EPA's formaldehyde emissions standard.<sup>6</sup> The statute itself notes that following EPA's regulations, HUD shall update its regulations for consistency with section 601 of TSCA. Both the statute and congressional intent support HUD's alignment of its regulations with EPA's regarding the scope of testing and products covered. Therefore, HUD proposes to no longer use its current scope of regulations that covered "plywood and particleboard materials bonded with a resin system or coated with a surface finish containing formaldehyde" and instead adopt EPA regulations coverage of "composite wood products in the form of a panel, or composite wood products incorporated into a component part or finished good," as defined by EPA. Composite wood product means hardwood plywood made with a veneer or composite core, medium-density fiberboard, and particleboard.

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<sup>6</sup> S. Rep. No. 111-169 (2010) at 6 and 8.

In addition to changing the scope of HUD's regulations, HUD proposes the following specific changes consistent with EPA regulations and the recommendations on the working draft provided by the MHCC:

Section 3280.5 Data plate.

HUD proposes to include on the manufactured home data plate a notification that as a finished good that incorporates composite wood product(s), the finished good is TSCA Title VI compliant. This certification is construed to cover all products that are incorporated into the manufactured home, including laminated products not exempted under 40 CFR 770.4. This change would ensure consistency with the current product certification scheme that already requires several other certifications on the manufactured home data plate. It would also ensure that manufacturers are certifying that all materials, components, and products used in manufactured homes are TSCA Title VI compliant and provide public awareness of compliance in place of the health notice on formaldehyde emissions currently required by 24 CFR 3280.309.

Section 3280.308 Formaldehyde emission controls for composite wood products.

In paragraph (a), HUD seeks to adopt, in addition to the definitions already applicable to this section, EPA definitions at 40 CFR 770.3. HUD's definitions at 24 CFR 3280.2 and 3280.302 covering manufactured home regulations, including formaldehyde emission controls, do not conflict with EPA regulations, and incorporation of EPA's definitions ensures consistency between EPA regulations and HUD regulations. The relevant terms for which EPA definitions are used include: Composite core, Component part, Composite wood product, EPA TSCA Title VI Laboratory Accreditation Body or EPA TSCA Title VI Laboratory AB, EPA TSCA Title VI Product Accreditation Body or EPA TSCA Title VI Product AB, EPA TSCA Title VI Third-Party Certifier or EPA TSCA Title VI TPC, Finished good, Hardwood plywood, Laboratory

Accreditation Body or Laboratory AB, Lot, Medium-density fiberboard, Non-complying lot, Panel, Panel producer, Particleboard, Product Accreditation Body or Product AB, Stockpiling, Thin medium-density fiberboard, Third-party certifier or TPC, Veneer, and Veneer core.

In paragraph (b), HUD proposes to adopt maximum formaldehyde emission standards that are in TSCA Title VI and EPA regulations at 40 CFR 770.10. This proposed rule, if adopted, would replace HUD's codified standards that currently apply to all plywood and particleboard materials bonded with a resin system or coated with a surface finish containing formaldehyde. The currently codified regulations set the level for formaldehyde emissions as follows: plywood materials shall not emit formaldehyde in excess of 0.2 parts per million (ppm); and particleboard materials shall not emit formaldehyde in excess of 0.3 ppm.

This proposed rule covers hardwood plywood made with a veneer core or composite core, medium density fiberboard, thin medium density fiberboard, and particleboard. The proposed new maximum levels for formaldehyde emissions of these composite wood products and component parts or finished goods incorporating these composite wood products would be, if adopted, as follows: hardwood plywood made with a veneer core or composite core is 0.05 ppm; medium density fiberboard is 0.11 ppm; thin medium density fiberboard is 0.13 ppm; and particleboard is 0.09 ppm. These maximum emission levels would be applicable whether the composite wood product is in the form of a panel or if composite wood products are incorporated into component parts or finished goods.

In paragraph (c), HUD proposes to require that as of the effective date of the final rule, only TSCA Title VI certified composite wood products, whether in the form of panels or finished goods, must be used in manufactured homes, consistent with EPA regulations at 40 CFR 770.15. HUD currently requires that manufactured homes with installed plywood and particleboard

comply with and certify that formaldehyde emissions meet standards. Exclusively using phenol-formaldehyde resins or finishes are excluded from this requirement. EPA's regulations at 40 CFR 770.15 require a certification that the composite wood products meet the new formaldehyde emission standards by June 1, 2018. EPA's regulations at 40 CFR part 770 also provides a narrow list of exceptions and alternative product certification procedures for producers of composite wood product panels made with no-added formaldehyde-based resins and for producers of composite wood product panels made with ultra low-emitting formaldehyde resins. HUD proposes to adopt 40 CFR 770.15 certification requirements and the same limited exemptions and alternative certification procedures for consistency with EPA's requirements.

In paragraph (d), HUD proposes that composite wood panels used by entities covered under HUD's regulations must be labeled by a panel producer consistent with EPA labeling requirements at 40 CFR 770.45. HUD currently requires that each plywood and particleboard panel that is installed in manufactured homes is stamped or labeled to identify the product manufacturer, date of production and/or lot number, and the testing laboratory certifying compliance with this section. In place of HUD's current requirements, 40 CFR 770.45 of the EPA final rule requires that panels or bundles of panels that are used in the United States are labeled with the panel producer's name, the lot number, the EPA TSCA Title VI TPC number, and a statement that the products are TSCA Title VI certified. EPA also sets forth at 40 CFR 770.45 the process for labeling composite wood panels that are bundled and not individually labeled.

In paragraph (e), HUD proposes to require that each manufactured home include certification labeling indicating that the home, as a finished good, has been produced with panels or products that comply with formaldehyde emission requirements set by HUD and 40 CFR Part

770. EPA regulations require that each composite wood product, whether in the form of panels or incorporated into component parts or finished goods that are sold in the United States, must include a product certification, with a few minor exemptions. Exemptions are included for producers of composite wood product panels made with no-added formaldehyde-based resins (40 CFR 770.17) and for producers of composite wood product panels made with ultra low-emitting formaldehyde resins (40 CFR 770.18). This certification requirement would be consistent with EPA requirements. HUD is also proposing to remove the health notice on formaldehyde emissions, recognizing the reduced formaldehyde emissions levels of composite wood products incorporated as panels or component parts of manufactured homes as a finished good that is required to be TSCA Title VI compliant evidenced by the certification label.

In paragraphs (f) and (g), HUD proposes to incorporate EPA's limitation on the sale, supply or offering of composite wood products from non-complying lots in the United States; and the prohibition of the sale of inventory determined to be stockpiled inventory (*see* 40 CFR 770.12) of composite wood products<sup>7</sup>. HUD currently addresses the handling, use, and certification of non-complying plywood and particleboard materials at 24 CFR 3280.308(b)(6) but does not address stockpiling requirements for manufacturers. Incorporating EPA provisions would make clear that restrictions and certification requirements authorized by TSCA Title VI, and included in EPA regulations, are applicable to manufactured housing.

Section 3280.309 Health notice on formaldehyde emissions.

HUD is proposing to remove the requirement for providing a Health Notice on formaldehyde emissions in each manufactured home, 24 CFR 3283.309, given the increase in ventilation standards and decrease in formaldehyde levels. The ventilation standards have

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<sup>7</sup> See, 83 FR 14375 (April 4, 2018).

changed significantly since the health warning was required in 1984. In 1984, HUD required ventilation only by openable glazed areas equal to 4 percent of each habitable room's floor area (40 FR 40270). As part of a set of changes that affected energy conservation and indoor air quality, Federal standards were changed, effective in October 1994, to require whole house ventilation (58 FR 55003). This change increased ventilation requirements beyond the ventilation provided by openable glazed areas in each habitable room. The change required mechanical and/or natural ventilation capable of providing 0.35 air changes per hour continuously, or at an equivalent hourly rate. This standard allowed 0.25 air changes per hour to be provided by natural infiltration/exfiltration. The remaining 0.10 air changes per hour are to be provided by mechanical ventilation. In 2005, the standards were changed again to include the whole house ventilation requirement from an air changes per hour requirement to a cubic feet per minute requirement sized based upon interior floor area. The change in standards removed consideration of natural infiltration/exfiltration as a factor in ventilation systems while retaining provisions for openable glazed areas in each habitable room in addition to the whole house ventilation requirements (70 FR 72042).

HUD believes the change to ventilation standards, coupled with the new lower compliance levels required in this proposed rule, supports the removal of the health notice from manufactured homes. This is because the decreased maximum formaldehyde emission levels will reduce exposure to formaldehyde that will result in avoided adverse health effects, such as eye irritation and nasopharyngeal cancer, and reduce the risk of asthma and allergic conditions in young children (see discussion at 81 FR 89677-78, December 12, 2016 and Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Final Rule, July 2016, EPA-HQ-OPPT-2016-0461-0029, [www.regulations.gov](http://www.regulations.gov)). Further, conventional homes have no

similar requirement for a health notice and HUD has not received consumer complaints in recent years that identify or otherwise indicate formaldehyde emissions are an appreciable concern based on complaint data, a basis for HUD's initial rulemaking (46 FR 43466). Additionally, the inclusion of the compliance requirement on the home data plate that the home is TSCA Title VI compliant is a more permanent notification that identifies that the materials used in the manufactured home meets the national standards.

Section 3280.406 Air chamber test method for certification and qualification of formaldehyde emission levels.

HUD currently requires that all plywood and particleboard materials, if bonded with a resin system or coated with a surface finish containing formaldehyde—except for phenol-formaldehyde resin systems or finish—be tested in a large air chamber, ASTM E 1333-96. The test is required for initial certification and thereafter, at least quarterly. The testing must be certified by a nationally recognized testing laboratory (24 CFR 3280.406).

In paragraph (a), HUD proposes to adopt all EPA definitions at 40 CFR 770.3 for the HUD revised 24 CFR 3280.406. Incorporation of EPA's definitions ensures consistency between EPA's regulations and HUD's regulations for purposes of test methods for certifying and qualifying formaldehyde emission levels.

In paragraph (b), HUD seeks to adopt EPA's testing standards at 40 CFR 770.20(a). EPA's 40 CFR 770.20(a) requires testing of unfinished panels within 30 days of the panel's production. HUD also seeks to adopt EPA's timing requirements at 40 CFR 770.20(b) for testing panels. Particleboard and medium-density fiberboard would be tested at least once per shift (8 or 12 hours, plus or minus 1 hour of production) for each production line for each product type. Particleboard and medium-density fiberboard panel producers are eligible for

reduced quality control testing if they demonstrate consistent operations and low variability of test values. Hardwood plywood would be tested at a frequency determined by the weekly production levels of the product. The EPA regulations also include quarterly testing requirements at 40 CFR 770.20(c). The EPA testing requirements also provide an additional option for small air chamber testing, ASTM D6007-14, consistent with EPA regulations, and updates the requirements for testing to the ASTM E 1333-14 edition. The proposed rule, if adopted, would continue to require quarterly testing and that such testing be supervised by EPA TSCA Title VI TPCs and performed by TPC laboratories. In paragraph (c), HUD proposes to require that samples for testing that are not produced in the United States but are shipped into and transported across the United States for quality control or quarterly testing, must comply with 40 CFR 770.24, requires that such panels must not be sold, offered for sale or supplied to any entity other than a TPC laboratory before testing and if test results for such products demonstrate compliance with the emission standards in this subpart, the panels may be relabeled in accordance and sold, offered for sale, or supplied.

HUD's current testing qualification requirements cover but do not specifically address imported products. HUD is proposing to update HUD's requirements to reflect the testing of products that are shipped into and transported across the United States, to make clear that such products if used must be tested in accordance with the new testing procedures proposed by HUD. Section 3280.407 Quality control testing, manuals, and facilities.

In paragraph (a), HUD proposes to adopt the EPA definitions at 40 CFR 770.3. Incorporation of EPA's definitions ensures consistency between EPA's regulations and HUD's regulations with respect to quality control testing and qualifying formaldehyde emission levels.



In paragraph (b), HUD proposes to require EPA's quality control testing and frequency of testing for hardwood plywood made with a veneer core or composite core, medium density fiberboard, and particleboard at 40 CFR 770.20(a) and (b). Consistent with EPA's regulations, HUD would also adopt EPA's additional quality control testing procedures. EPA's 40 CFR 770.20(a) requires testing of unfinished panels within 30 days of the panel's production. In accordance with 40 CFR 770.20(b), particleboard and medium-density fiberboard must be tested at least once per shift (8 or 12 hours, plus or minus 1 hour of production) for each production line for each product type. Particleboard and medium-density fiberboard panel producers are eligible for reduced quality control testing if they demonstrate consistent operations and low variability of test values. Hardwood plywood must be tested at a frequency determined by the weekly production levels of the product.

In paragraph (c), HUD proposes to adopt the requirement that a panel producer have a written quality control manual, designate a quality control facility for conducting quality control formaldehyde testing under 24 CFR 3280.406, and designate a person as quality control manager with adequate experience or training to be responsible for formaldehyde emissions quality control consistent with 40 CFR 770.21.

24 CFR part 3282 Manufactured home procedural and enforcement regulations.

HUD seeks to adopt the definition for "finished good" at 40 CFR 770.3 for purposes of clarifying the scope of what is subject to the recordkeeping requirements consistent with EPA requirements. The adoption of the term "finished good" in HUD's definition section, 24 CFR 3282.7, will identify goods that must comply with recordkeeping requirements in 24 CFR 3282.212 and 3282.257. Recordkeeping requirements in 24 CFR 3282.212 and 3282.257 use the terms "Component", "Distributor", "Purchaser", and "Retailer" that are already in HUD's

current definition section. While EPA has different definitions for those terms, HUD believes that its existing definitions are broad enough to capture the scope of EPA's recordkeeping requirements. Therefore, HUD is not proposing to adopt those EPA definitions in 24 CFR part 3282 but maintains its own definitions for those terms.

24 CFR part 3282.212 TSCA Title VI requirements.

HUD proposes that consistent with EPA, manufacturers maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the components or finished goods are TSCA Title VI compliant consistent with 40 CFR 770.30(c) and that manufacturers must maintain such records for a minimum of 3 years from the date of purchase, consistent with 40 CFR 770.40.

24 CFR part 3282.257 TSCA Title VI requirements.

HUD proposes that consistent with EPA, retailers and distributors maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant consistent with 40 CFR 770.30(c) and retailers and distributors must maintain such records for a minimum of 3 years from the import date or the date of purchase or shipment, consistent with 40 CFR 770.40.

### **III. 30-Day Public Comment Period**

In accordance with HUD's regulations on rulemaking at 24 CFR part 10, it is HUD's policy that the public comment period for proposed rules should be 60 days. In the case of this proposed rule, however, HUD has determined there is good cause to reduce the public comment period to 30 days for the following reasons:

First, HUD is proposing to implement the standards in Title VI of TSCA as required by the Formaldehyde Standards for Composite Wood Products Act of 2010 consistent with EPA's

rule. Title VI requires that “after the date of promulgation of regulations pursuant to section 601(d) of the Toxic Substances Control Act (as amended by section 2), the Secretary of Housing and Urban Development shall update the regulation contained in section 3280.308 of title 24, Code of Federal Regulations (as in effect on the date of enactment of this Act), to ensure that the regulations reflects the standards established by Section 301 of the Toxic Substances Control Act.” HUD believes that the intent of the statute is for HUD’s regulations to mirror EPA’s regulation. If the statute intended HUD to implement its regulations in a different way, HUD would have been required to implement Title VI of TSCA upon its passage and not after EPA issued regulations. Given the lack of discretion HUD is provided in implementing Title VI of TSCA, HUD believes that a longer comment period is unnecessary.

Second, EPA in its rulemaking took comment on how to harmonize EPA’s regulatory program under TSCA Title VI with HUD’s manufactured home program, and what steps should be taken so that the programs are complementary. 78 FR 34820 at 34841. The majority of commenters agreed that HUD and EPA should ensure that the regulations are consistent and clear, while one commenter stated that the Formaldehyde Standards for Composite Wood Products Act of 2010 was unnecessary given HUD’s existing regulations.<sup>8</sup> EPA received minimal comments on this question, all of which recommended streamlining the rule. EPA also addressed many other comments in its rule in order to come up with the current standards. Given HUD is adopting EPA’s standards that have already been subject to notice-and-comment rulemaking and the feedback from commenters on how HUD and EPA should ensure

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<sup>8</sup> See U.S. EPA Formaldehyde Emission Standards to Composite Wood Products – Response to Comments. 2016. Docket # EPA-HQ-OPPT-2016-0461-0034, at <http://www.regulations.gov>.

consistency across agencies, HUD believes that a shortened time frame for public comment is appropriate.

Lastly, maintaining a separate set of standards for compliance, reporting, recordkeeping and labeling for the manufactured housing industry is unnecessary. EPA has set a national standard for all products, and maintaining separate, different HUD standards is inconsistent with the intent of the Formaldehyde Standards for Composite Wood Products Act of 2010. EPA's regulations, which are compliant with Title VI of TSCA, has stricter standards than HUD's current regulations and, thus, all available products will need to comply with those stricter standards. Maintaining HUD's current formaldehyde emissions standards would also be inconsistent with the statutory requirement that HUD's regulations reflect the standards required to be developed by EPA under Title VI of TSCA. The longer HUD delays issuance of its final rule, the longer the manufactured housing industry will be subject to two conflicting Federal regulations which is burdensome and confusing.

Given the statutory requirement and above justifications, HUD believes that good cause exists to reduce the public comment period to 30 days. All comments received during the 30-day public comment period will be considered in the development of the final rule.

#### **IV. Findings and Certifications**

##### Regulatory Review – Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This proposed rule was determined to be a “significant regulatory action” as defined in section 3(f) of the Executive order, but not an economically significant regulatory action, as provided under section 3(f)(1) of Executive Order 12866. Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

#### Executive Order 13771

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an Agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the Agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. For the reasons discussed in the Regulatory Impact Analysis (RIA), this proposed rule has been determined to be an Executive Order 13771 deregulatory action.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The Office of Management and Budget (OMB) has issued HUD control number 2502-0253 for the information collection requirements under the Manufactured Home Construction and Safety Standards Act Reporting Requirements. HUD will update the existing OMB control number to include the minimum time required for entities to maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant for a minimum of 3 years from the date of purchase, consistent with 40 CFR 770.30(c).

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

#### Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

## Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would regulate establishments primarily engaged in making manufactured homes (NAICS 32991). The Small Business Administration defines a small manufactured homes manufacturing business as one that does not exceed 1,250 employees. Of the 222 firms included under this NAICS definition, approximately 35 produce manufactured homes subject to HUD's Manufactured Housing Construction and Safety Standards. Other entities covered by this NAICS code build non HUD-code prefabricated buildings. Of the 35 manufacturers subject to HUD's Manufactured Housing Construction and Safety Standards, 31 are considered to be small businesses based on the threshold of 1,250 employees or less.

HUD believes the *de minimis* cost of adopting this proposed rule, specifically the change to the data plate, will be offset by the savings that result from the changes in materials subject to testing and the removal of the health notice. Therefore, HUD has determined the impact of this proposed rule, if adopted, on all entities, to include small entities, will not be significant.

As required by statute, EPA published a final rule that established new formaldehyde emission standards for composite wood products. As also required by statute, HUD's proposed rule would update HUD's existing formaldehyde requirements to align with and reflect those issued by EPA. Despite the new requirements, as discussed in HUD's regulatory impact analysis, HUD anticipates there will not be any new or additional cost impacts resulting from implementation of this proposed rule—other than *de minimis* costs to change the template used

to create the data plate. Initially, composite wood products at EPA reduced formaldehyde levels are currently the majority of products available in the marketplace. This circumstance exists because of similar requirements currently in effect in California under CARB ATCM. CARB ATCM requires composite wood products used in manufactured housing shipped to California to already comply with CARB requirements. As with many industries, rather than procuring special products for different final destinations, manufactured housing producers are likely to procure products that can be used in homes that it can ship anywhere.

This impact analysis includes all segments--manufacturers, retailers, and consumers, including small entities. In EPA's final rule, which affected a much broader number and type of small entities, for example, EPA determined in Table 2 of its final rule, that 99 percent of small business firms with cost impacts of more than 1 percent of revenues will have annualized costs of less than \$250 per year.

In addition, this proposed rule, if adopted, would provide cost savings for HUD's manufactured housing manufacturers covered by this rule by eliminating the burden of placing the health notice (approximately \$270,270 a year), testing structural plywood and retesting panels after a finishing is added. Therefore, while the proposed rule, if adopted, would affect a substantial number of small entities, 31 out of the 35 affected entities (86 percent,) it would likely result in a reduction of costs or a *de minimis* cost. For the reasons stated above, HUD knows of no instance of a manufacturer with fewer than 1,250 employees that would be significantly affected economically by this rule. Therefore, although this proposed rule, if adopted, would affect a substantial number of small entities, HUD has determined that it would not have a significant economic impact on them.



Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments on its RIA, this certification, and any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on state and local governments or is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have Federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number for Manufactured Housing Construction and Safety Standards is 14.171.

#### **List of Subjects**

##### **24 CFR Part 3280**

Housing standards, Manufactured homes

##### **24 CFR Part 3282**

Consumer protection, Manufactured homes

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR parts 3280 and 3282 as follows:

**PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY  
STANDARDS**

1. The authority citation for part 3280 is revised to read as follows:

**Authority:** 15 U.S.C. 2697, 42 U.S.C. 3535(d), 5403, and 5424.

2. In § 3280.5, add paragraph (i) to read as follows:

**§ 3280.5 Data plate.**

\* \* \* \* \*

- (i) The statement: The manufacturer certifies this home is TSCA Title VI Compliant.

3. Revise § 3280.308 to read as follows:

**§ 3280.308 Formaldehyde emission controls for composite wood products.**

- (a) Definitions. For purposes of this section, the definitions found in 40 CFR 770.3 apply.

(b) Formaldehyde emission levels. The following maximum formaldehyde emission standards apply whether the composite wood product is in the form of a panel, or is incorporated into a component part or finished good:

(1) For hardwood plywood made with a veneer core or composite core, the maximum level is 0.05 parts per million (ppm) of formaldehyde;

(2) For medium density fiberboard, the maximum level is 0.11 ppm of formaldehyde;

(3) For thin medium density fiberboard, the maximum level is 0.13 ppm of formaldehyde; and

(4) For particleboard, the maximum level is 0.09 ppm of formaldehyde.

(c) Product certification and continuing qualification. Only certified composite wood products whether in the form of panels or incorporated into component parts or finished goods, are permitted to be used in manufactured homes sold, supplied, offered for sale, or manufactured in or imported into the United States, consistent with Environmental Protection Agency (EPA) product testing requirements at 40 CFR 770.15. See § 3280.406 for testing requirements for product certification and testing requirements for continuing qualification of formaldehyde emission levels.

(d) Panel label. Manufactured homes must use panels or bundles of panels that are labeled by a panel producer consistent with the labeling requirements at 40 CFR 770.45.

(e) Finished good certification label. Each manufactured home must be provided with a finished good certification label indicating that the home has been produced with composite wood products, or finished goods that contain composite wood products, that comply with the formaldehyde emission requirements of this Part 3280 and 40 CFR Part 770 consistent with § 3280.5(i).

(f) Non-complying lots. Composite wood products from non-complying lots (i.e., lots that exceed the applicable formaldehyde ppm) are not certified composite wood products and may not be used in manufactured homes except in accordance with section 40 CFR 770.22.

(g) Stockpiling. The use of stockpiled inventory of composite wood products, whether in the form of panels or incorporated into component parts or finished goods, in manufactured homes, is prohibited in accordance with EPA regulations at 40 CFR 770.12(b) through (d).

(h) Third Party Certification. All composite wood products in paragraph (b) of this section must be certified by an agency or organization that has been recognized to participate in the EPA TSCA Title VI Third Party Certification Program.

**§ 3280.309 [Removed]**

4. Remove § 3280.309.
5. Revise § 3280.406 to read as follows:

**§ 3280.406 Air chamber test methods for certification and continuing qualification of formaldehyde emission levels.**

(a) Definitions. For purposes of § 3280.406, the definitions found in 40 CFR 770.3 apply.

(b) Testing requirements. Testing of panels made of hardwood plywood made with a veneer core or composite core, medium density fiberboard, thin medium density fiberboard, and particleboard for compliance with § 3280.308(b) must be performed pursuant to the general requirements of 40 CFR 770.20(a) and (b), for certification testing, pursuant to one of the air chamber test methods specified in 40 CFR 770.15, and, for quarterly testing, pursuant to one of the air chamber test methods specified in 40 CFR 770.20(c).

(c) Samples for testing. Samples for testing not produced in the United States, but shipped into and transported across the United States for quality control or quarterly testing, must comply with 40 CFR 770.24.

6. Add § 3280.407 to read as follows:

**§ 3280.407 Quality control testing, manuals, facilities, and personnel.**

(a) Definitions. For purposes of this section, the definitions found in 40 CFR 770.3 apply.

(b) Quality control testing. Quality control testing is required for hardwood plywood made with a veneer core or composite core, medium density fiberboard, thin medium density fiberboard, and particleboard must be performed in accordance with the general requirements in

40 CFR 770.20(a) and by one of the test methods and at the frequency specified in 40 CFR 770.20(b). Panels being tested with an equivalence, correlation or alternative method must ensure compliance with the requirements of 40 CFR 770.20(d).

(c) Quality control manuals, facilities, and personnel. A panel producer must have a written quality control manual, must designate a quality control facility for conducting quality control formaldehyde testing under this section, and must designate a person as quality control manager with adequate experience and/or training to be responsible for formaldehyde emissions quality control consistent with 40 CFR 770.21. A panel producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) composite wood products (hardwood plywood made with a veneer or composite core, medium-density fiberboard and particleboard) on the premises.

## **PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS**

7. The authority citation for part 3282 is revised to read as follows:

**Authority:** 15 U.S.C. 2697, 42 U.S.C. 3535(d), 5403, and 5424.

8. In § 3282.7, add the definition “finished good”, in alphabetical order, to read as follows:

### **§ 3282.7 Definitions.**

\* \* \* \* \*

Finished good has the meaning provided in 40 CFR 770.3.

\* \* \* \* \*

9. Add § 3282.212 to read as follows:

**§ 3282.212 TSCA Title VI Requirements.**

Manufacturers must maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant for a minimum of 3 years from the date of import, purchase, or shipment, consistent with 40 CFR 770.30(c) and 40 CFR 770.40.

10. Add § 3282.257 to read as follows:

**§ 3282.257 TSCA Title VI Requirements.**

Retailers and distributors must maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant for a minimum of 3 years from the date of import, purchase or shipment, consistent with 40 CFR 770.30(c) and 40 CFR 770.40.

Dated: March 13, 2019

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Brian D. Montgomery  
Assistant Secretary for Housing –  
Federal Housing Commissioner

**[BILLING CODE: 4210-67]**

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